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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 TAMI AYALA,)
8 vs.) Plaintiff,) Case No. 2:11-cv-01147-KJD-PAL
9)) **ORDER**
10 COLLEGE OF SOUTHERN NEVADA,) (Mtn to Vacate DPSO - Dkt. #13)
11) Defendant.)
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13 This matter is before the court on Defendant College of Southern Nevada's Motion to Vacate
14 Scheduling Order (Dkt. #13). No response to the Motion was filed, and the time for filing one has now
15 run. The court has considered the Motion.

16 Plaintiff filed her Complaint (Dkt. #1) on July 12, 2012 against Defendant College of Southern
17 Nevada. Defendant filed a Motion to Dismiss (Dkt. #7) on March 2, 2012, which is currently pending
18 before the district judge. The Motion to Dismiss asserts Plaintiff did not name the proper party in her
19 Complaint because "College of Southern Nevada" is not a recognized legal entity under the Nevada
20 Constitution or NRS 396.020. Additionally, Plaintiff has not properly served Defendant as a political
21 subdivision under Rule 4(j) of the Federal Rules of Civil Procedure, and the time for service under Rule
22 4(m) has now run. Plaintiff was served with the court's standard order regarding the requirements of
23 *Klingele v Eikenberry* and *Rand v Rowland* for responding to a motion to dismiss, but has not filed a
24 response.

25 The Motion requests that the court vacate the Discovery Plan and Scheduling Order (Dkt. #11)
26 entered April 27, 2012. Relying on *SEC v. Ross*, Defendant contends the court does not have
27 jurisdiction over it because it was not properly served with the Complaint. 504 F.3d 1130, 1138-40 (9th
28 Cir. 2007).

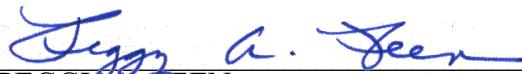
1 A pending motion to dismiss does not ordinarily warrant a stay of discovery. *Turner*
2 *Broadcasting System, Inc. v. Trascinda Corp.*, 175 FRD 554, 556 (D. Nev 1997). However, common
3 situations in which a court may determine that staying discovery pending a ruling on a dispositive
4 motion occur when dispositive motions raising issues of jurisdiction, venue, or immunity are pending.
5 *Id.* (citing *Twin City Fire Ins. v. Employers Insurance of Wausau*, 124 F.R.D. 625, 653 (D. Nev. 1989)).
6 Here, Defendant's Motion to Dismiss raises issues of personal jurisdiction. Additionally, Local Rule 7-
7 2(e) provides, in pertinent part, "The failure of an opposing party to file points and authorities in
8 response to any motion shall constitute a consent to the granting of the motion. Plaintiff has failed to
9 oppose Defendant's motion to dismiss and request to vacate the Discovery Plan and Scheduling Order.

10 Accordingly,

11 **IT IS ORDERED:**

12 1. Defendant's Motion to Vacate the Scheduling Order (Dkt.#13) is GRANTED.
13 2. In the event the Motion to Dismiss (Dkt. #7) is denied, the parties shall meet and confer
14 and file a proposed discovery plan and scheduling order no later than fourteen days after
15 the district judge's decision.

16 Dated this 11th day of June, 2012.

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19 PEGGY A. LEEN
20 UNITED STATES MAGISTRATE JUDGE
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